

IN THE CASE OF: ██████████

BOARD DATE: 17 April 2024

DOCKET NUMBER: AR20230010360

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service, and an appearance before the Board via video or telephone.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, all but the last six months of his service was honorable. He needs an upgrade of his discharge to apply for a military discount for his master's degree, Department of Veterans Affairs benefits, and disability.
3. The applicant enlisted in the Regular Army on 18 November 1986. Upon the completion of initial entry training, he was awarded military occupational specialty 19E (Armor Crewman). He extended on 15 November 1988 and reenlisted on 29 April 1989. The highest rank he attained was sergeant/E-5.
4. An excerpt from the Military Police (MP) Desk Blotter, Fort Huachuca, AZ, shows the applicant was arrested for assaulting a man with a .22 automatic handgun on 11 March 1990. He failed to appear in court for the scheduled trial. A warrant was issued for his arrest. He subsequently appeared in court. A plea agreement was reached, and he was sentenced to three years' probation for Simple Assault.
5. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 20 June 1990, for failing to maintain sufficient funds in his checking account to adequately cover checks (two checks). His punishment consisted of 14 days restriction and 14 days extra duty.

6. A DA Form 4465 (Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Intake/Screening Record) shows the applicant was command referred to the ADAPCP on 17 August 1990.

7. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the UCMJ, on 11 October 1990, for wrongfully and unlawfully drawing two checks upon the Huachuca Federal Credit Union against insufficient funds, on 6 June 1990 and 24 June 1990, and for breaking restriction at diverse times and dates, between on or about 5 September 1990 and 18 September 1990. His punishment consisted of reduction to specialist/E-4, forfeiture of \$472.00 pay per month for two months, and 30 days of restriction and extra duty.

8. On 23 October 1990, the applicant received an administrative reprimand from the Deputy Commanding General, U.S. Army Information Systems Command, Fort Huachuca, AZ, for operating a vehicle with an alcohol level of .11 percent (DUI). The DCG informed him the reprimand was an administrative action and not punishment under UCMJ. Any matters submitted in rebuttal would be considered prior to a final decision regarding the filing of the reprimand in the applicant's Official Military Personnel File (OMPF). The applicant acknowledged receipt and elected not to make a statement in his own behalf. On 20 January 1991, the Commanding General directed the reprimand be filed in the applicant's OMPF.

9. A DA Form 4187 (Personnel Action) shows the applicant's duty status changed to absent without leave (AWOL) on 16 November 1990.

10. An excerpt from the MP Desk Blotter, dated 21 November 1990, shows a preliminary investigation revealed the applicant issued 36 checks, to numerous victims, totaling \$5,383.47, and he stole \$180.00 cash from the Company Unit Fund.

11. A DA Form 4187 shows the applicant's duty status changed from AWOL to Dropped from Unit Rolls on 16 December 1990.

12. Court-martial charges were preferred against the applicant on 16 December 1990 for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with 14 specifications of wrongfully and unlawfully drawing checks, on 17 occasions, upon the ██████████ Federal Credit Union against insufficient funds, between on or about 15 June 1990 and 31 October 1990, and for being AWOL, on or about 16 November 1990 until on or about 16 December 1990.

13. Two DA Forms 4187 shows the applicant surrendered to his company commander and was subsequently confined by military authorities on 18 December 1990. His duty status was changed to Present for Duty on 27 December 1990.

14. An additional DA Form 4187 and an excerpt from the MP Desk Blotter, shows the applicant was arrested by civil authorities on 4 January 1991, for violating his probation by receiving a DUI, failing to notify his probation officer of his DUI, and failing to notify his probation officer of his change of address. He was incarcerated, pending arraignment. He appeared in court on 29 January 1991, entered a plea of guilty to probation violation, and was sentenced to 180 days of incarceration.

15. The applicant consulted with legal counsel on 28 February 1991.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested a discharge for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting a discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He elected not to submit a statement.

16. The separation authority approved the applicant's requested discharge for the good of the service on 6 March 1991 and further directed the applicant be reduced to the lowest enlisted grade and the issuance of an UOTHC discharge.

17. The applicant underwent a pre-separation medical examination on 14 March 1991. The relevant Standard Form (SF) 93 (Report of Medical History) and the corresponding SF 88 (Report of Medical Examination) shows the applicant reported being in good health, and he was deemed physically qualified for separation.

18. The applicant was discharged on 22 March 1991, under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his character of service was UOTHC, with separation code KFS and reentry code RE-4. He was credited with 4 years and 6 days of net active service, with lost time from

16 November 1990 to 26 December 1990 and 4 January 1991 to 22 March 1991. He was awarded or authorized the following:

- Army Achievement Medal (2nd award)
- Army Good Conduct Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Noncommissioned Officer Professional Development Ribbon (2nd award)
- Marksman Marksmanship Qualification Badge with Pistol Bar (.45)
- Marksmanship Qualification Badge with Grenade Bar

19. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

20. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of mitigating factors to overcome the misconduct of a DUI, uttering 36 worthless checks, to numerous victims, totaling \$5,383.47, and stealing cash from the Company Unit Fund. The applicant provided no post service accomplishments or character letters of support for the Board to weigh a clemency determination.

2. The Board determined, the character of service the applicant received upon separation was not in error or unjust. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. However, during deliberation the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief to correct his continuous honorable service time.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 22 March 1991 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 861118 UNTIL 890428

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of his under other than honorable conditions (UOTHC) character of service.

4/19/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

ADMINISTRATIVE NOTE(S): N/A

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides the ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. AR 635-5 (Personnel Separations) did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.
4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.
 - b. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. Paragraph 3-7b provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//